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July 16, 1992

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
Washington, DC 20554

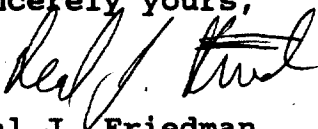
Re: MM Docket No. 87-268

Dear Ms. Searcy:

Transmitted herewith on behalf of Gillett Holdings, Inc.,  
SCI Television, Inc. and Busse Broadcasting Corporation are an  
original and four (4) copies of their Comments on Petitions for  
Partial Reconsideration in the above-referenced proceeding.  
Kindly refer this material to the Commission.

Should you or the staff have any questions, kindly contact  
the undersigned.

Sincerely yours,

  
Neal J. Friedman

Enclosures

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In the Matter of

Advanced Television Systems  
and Their Impact Upon the  
Existing Television Broadcast  
Service

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MM Docket No. 87-268

Federal Communications Commission  
Office of the Secretary

TO: The Commission

**COMMENTS ON PETITIONS FOR PARTIAL RECONSIDERATION**

Gillett Holdings, Inc. ("GHI")<sup>1/</sup>, SCI Television, Inc. ("SCI")<sup>2/</sup> and Busse Broadcasting Corporation ("Busse")<sup>3/</sup> (and collectively "Commenters"), by their attorneys and pursuant to §1.429 of the Rules of the Commission, hereby submit their comments in response to the petitions for partial reconsideration of the Commission's Second Report & Order/Further Notice of Proposed Rulemaking in MM Docket 87-268, 7 FCC Rcd 3340 (1992) ("Second Report & Order"), filed by the National Association of Broadcasters ("NAB") and the Association of Maximum Service Telecasters ("MSTV") filed on June 22, 1992.<sup>4/</sup>

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<sup>1/</sup> GHI is the corporate parent of the licensees of television stations WTVT-TV, Tampa, Florida; KSBY(TV), San Luis Obispo, California and KSBW(TV), Salinas, California.

<sup>2/</sup> SCI is the corporate parent of the licensees of television stations WSBK-TV, Boston, Massachusetts; WAGA-TV, Atlanta, Georgia; WJW-TV, Cleveland Ohio; WJBK-TV, Detroit, Michigan; WITI-TV, Milwaukee, Wisconsin; and KNSD-TV, San Diego, California.

<sup>3/</sup> Busse is the licensee of television stations WWMT-TV, Kalamazoo, Michigan; WEAU-TV, Eau Claire, Wisconsin; KOLN-TV, Lincoln, Nebraska and its satellite KGIN-TV, Grand Island, Nebraska.

<sup>4/</sup> The filing of the petitions for reconsideration of the Second Report & Order, was announced in the Federal Register on July 1, 1992, 57 Fed. Reg. 29320 (July 1, 1992), thus these Comments are timely filed.

1. Commenters support, in principle, the highly relevant points made in NAB's and MSTV's excellent petitions. These two organizations, however, speak for a broad range of stations throughout the nation and their position must, of necessity, be crafted to satisfy the sometimes competing and conflicting interests of those stations. Commenters are three groups of stations representing network affiliates, an independent, VHF and UHF stations, a satellite station and 12 television translators serving markets ranging in ADI rank from 6 (Boston) to 134 (Eau Claire). Commenters are, therefore, well-situated to provide additional station-specific input to the Commission's decision on reconsideration.

2. Of primary concern to Commenters is the Commission's timetable for construction of HDTV facilities. The Second Report & Order requires that existing television licensees must apply for an HDTV construction permit within two years of the adoption of a table of allotments or the selection of an ATV system, whichever is later. Second Report & Order at ¶ 25. Commenters have no problem with this. They are cognizant of the fact that existing broadcasters will be in the vanguard of bringing HDTV service to the public as expeditiously as possible and, within the current financial realities of the television industry, are willing to accept that burden.<sup>5/</sup> The Commission will also require that construction be completed within three years. The Second Report & Order states at ¶ 29 that the Commission's present rules do not permit an extension for inability to obtain financing and the Commission says that it sees no reason to modify this rule. Commenters respectfully suggest that the special circumstances of the conversion to HDTV provide ample justification for modification of the rule.

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<sup>5/</sup> Cable operators, DBS licensees, LPTV licensees and other potential competitors of over-the-air broadcasters in the video marketplace are under no requirement to construct HDTV facilities on a Commission-imposed timetable. Thus, they may sit back and wait for the market to be created and developed at the expense of broadcasters and will make their investment only when the financial risk and the costs are far less than they will be at the outset when broadcasters will be required to invest in new plant and equipment.

3. The Commission's requirement of a financial showing in connection with the filing of FCC Form 301 makes perfect sense in the context of an applicant for construction of new facilities or modification of existing facilities. The filing of such an application is an entirely voluntary act. Unlike the HDTV applicant who, under the Commission's current proposal, must either file an HDTV application or risk losing the capacity to broadcast when NTSC licenses are phased out, the applicant for new or improved facilities files if and only if it make economic sense. If the cost-benefit analysis does not justify filing an application for new or improved facilities, the applicant can wait for the day when such an expenditure is justified. The existing television licensee has no such choice. The Commission's "build it and they will watch" approach to HDTV mandates otherwise. This approach has some facial appeal, but it ignores the present financial realities of the television industry and the changing video marketplace, which the Commission itself has addressed in its Notice of Proposed Rulemaking ("NPRM") in MM Docket 91-221, FCC 92-209 (released June 12, 1992). The NPRM at ¶ 5 cites the declining audience shares and profits for broadcast television stations and networks.

4. It is well documented that lending institutions are less willing to provide funds to the broadcast industry than they once were. The costs of conversion to HDTV will be substantial. Television stations will have to be rebuilt from the ground up to accommodate HDTV. The Commission's Advisory Committee on Advanced Television Systems has concluded that a significant number of stations will also be required to construct new antenna towers and acquire new sites. NAB cites at p. 24 estimates of up to \$2 million just to pass through a network or syndicator-delivered HDTV signal. That cost is the same in major markets such as Boston, Atlanta or Tampa as it is in small markets like Eau Claire, San Luis Obispo or Salinas. KOLN in Lincoln will have to rebuild its Grand Island satellite during the specified five-year period even though that market, by definition, is too small to support even an NTSC television station. NAB

estimates the additional debt expense to finance this minimal HDTV construction at nearly \$400,000 per year. There is no economic data even suggesting that conversion to HDTV will generate the additional revenues to offset such an expenditure.

5. The history of broadcasting teaches us that new technologies have been introduced first in larger markets and then, as consumer demand increased and economies of scale drove down the cost, these new technologies were implemented in smaller markets and eventually nationwide. The conversion from monochrome to color television provides a perfect parallel. Like HDTV, it required licensees to rebuild their studios and transmission plants as consumers were required to purchase new receivers. The Commission, after adopting a standard for transmission of color television, correctly permitted the marketplace to determine the pace of conversion. Initially, the costs were high for broadcasters and consumers. Color television came first to the largest markets where there were significant numbers of affluent consumers willing to pay the substantial premium for purchase of color television receivers. It did not begin in places like Eau Claire, Wisconsin or San Luis Obispo, California or even in larger markets like Cleveland or Milwaukee. Eventually, the costs came down to the point that most consumers could afford color receivers and the smallest television stations were able to justify the investment in color television studio and transmission equipment. In a relatively short period of time the marketplace, without interference from the Commission, determined that there would be a total conversion from monochrome to color television.<sup>9</sup>

6. Commenters respectfully submit that market forces are adequate to determine the pace at which the conversion to HDTV will occur. The television networks will, no doubt, lead the way in converting to HDTV transmission. Their owned and operated stations and affiliates in

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<sup>9</sup> The point was made once again on the date of filing of these comments when the Commission voted to open the first filing window for the new Interactive Video and Data Service (IVDS) technology in New York, the largest market in the country.

larger markets will be the first to convert their transmission facilities to HDTV. As NAB notes at p. 24, the 1990 net revenues of stations in ADIs 1-25 was \$40 million, which in most cases should be is adequate to justify the initial cost of conversion. NAB further states that average revenues in ADIs 101+ in 1990 were only \$4 million clearly not enough to support even a minimal conversion to HDTV. Stations such as KSBW, KSBY and WEAU, which are located in these smaller markets may not be able to afford the high cost of conversion within the five-year timetable the Commission has proposed.

7. There is a simple solution. Commenters respectfully suggest that the Commission modify FCC Form 301 with respect to applications for HDTV facilities to require only that an applicant demonstrate that it has prepared a complete business plan such as is required for applicants for new facilities, and is using its best efforts to obtain financing for construction of the proposed facilities as expeditiously as possible. This approach will prevent a television licensee from merely sitting on its hands. The licensee will be required to prepare engineering, determine if its existing tower is adequate, prepare realistic cost estimates and take all other steps necessary for conversion to HDTV. After Commission review, the construction permit would be issued for the three-year period the Commission has proposed. If an applicant could not complete construction within that period, for whatever reason (including economic considerations) extensions could be granted. There may, for example, be situations in which a licensee is able to obtain financing, but the debt service could push the station from being profitable into the loss column. See ¶4 supra. A licensee should be permitted to use its prudent business judgment to determine when to make the conversion to HDTV. The Commission would certainly not want to be in the position of requiring a licensee to take action that would result in economic ruin.

8. Commenters further suggest that the HDTV allocation remain paired with the existing NTSC allocation during the entire 15-year conversion period. Thus, an applicant would

not run the risk of going to the trouble and expense of resolving all of the problems standing in the way of completing construction only to find that it had lost its HDTV allocation.

9. The Commission is proposing to require licensees to surrender their NTSC licenses at the end of the 15-year period during which it is presumed that the conversion to HDTV will be complete so that it might recapture the present NTSC spectrum for other uses.<sup>7/</sup> Commenters suggest that the only sanction for those licensees who have not converted to HDTV at that time should be a requirement that they surrender their second allocation. These licensees should, however, be permitted to continue to broadcast an NTSC signal until such time as it is economically feasible for them to convert.<sup>8/</sup> Indeed, being relieved of the economic burden of having to operate two stations simultaneously will most probably tip the scales in favor of conversion.

10. We are advised that HDTV receivers will be compatible with NTSC signals, as they would have to be during the conversion period when stations are not broadcasting a full schedule of HDTV programming. Thus, if a station continued to broadcast in NTSC only at the end of the 15-year period, there would be no loss of service to the public. In reality, however, it is quite likely that marketplace forces will require that every licensee will ultimately convert to HDTV or sell out to someone who is capable of doing so.

11. Commenters do not believe that the Commission's fast track approach for HDTV conversion will have its intended effect of bringing this new service to the public in a speedy

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<sup>7/</sup> The Commission already plans to review the progress of HDTV in 1998. Commenters respectfully suggest that the Commission schedule additional reviews of progress towards HDTV conversion at regular intervals thereafter so that it might make appropriate adjustments in its timetable.

<sup>8/</sup> It is questionable whether the Commission has the authority under present law to, in effect, revoke a license for failure to convert to a new technology. The technical quality of the service provided, so long as it is within licensed parameters, is not an element of renewal expectancy.

manner. Indeed, it may have just the opposite effect. If every television station in the nation is required to convert to HDTV within five years, there will be many stations, both network affiliates and independents, in small markets and marginal operations in larger markets that will be unable to meet the deadline. The Commission has already determined that existing broadcasters are best situated to bring HDTV to the public in a speedy fashion. An unrealistic timetable for HDTV conversion and the draconian consequences for those stations unable to meet the deadline, will only serve to frustrate those good intentions.

12. Consider the following scenario under the Commission's proposed timetable. A secondary market television station wishes to make its application for HDTV facilities within the required two-year period. Even before the Commission starts the clock, the station begins preparing cost estimates and seeking financing for the \$2 million it estimates will be required to meet the minimum requirements for conversion; i.e., the ability to emit an HDTV signal regardless of source. Second Report & Order at ¶ 24. Declining revenues have reduced the value of the station. One lender after another reviews the station's balance sheet and decides financing HDTV construction at this time is not worth the risk. The two years pass and the station is unable to submit FCC Form 301 because it cannot answer the financial qualification question affirmatively.

13. The Commission issues a Public Notice announcing that it will accept applications for the now-vacant HDTV allocation. Speculators flood the Commission with applications. A lengthy hearing and appeal process ensues. Years go by as the litigation continues. In the interim, the station's balance sheet improves. The cost of HDTV conversion drops substantially because of increased competition in the equipment market and economies of scale. Receiver penetration also increases. A lender, recalling the station's earlier attempt to raise funds, is now ready to provide funding. The station cannot take advantage of the offer. It has lost its allocation. Litigation drags on. The station's viewers are clamoring for HDTV service. But they will have to



wait for years until the litigation concludes. The station operator, who has a long and exemplary record of service to the community, can only look forward to the day when the Commission will cancel its NTSC license and it closes up shop.


14. The above scenario is not idle speculation. It is a very real prospect for all but the largest and most well-financed broadcasters. The effect of the Commission's action, therefore, will not be to permit experienced broadcasters to bring HDTV service to the public as promptly as possible. Rather, it will have the unintended effect of driving those very broadcasters out of the industry and opening the way not only for a few earnest new entrants, but a horde of speculators. The Commission need only look back a few years to the disastrous gold rush mentality that pervaded the Docket 80-90 proceeding in the FM service and the abuses that have developed in other new non-broadcast services.

15. The Commission's plan for implementing HDTV service, if allowed to stand, will have disastrous and unintended effects for the public and the industry. Commenters respectfully submit that allowing market forces to determine the pace of conversion to HDTV is far preferable to having the government's heavy hand dictate choices for consumers. Each and every time a new broadcast technology has emerged the Commission has limited its role to setting the standards and then stepping back to allow the marketplace to decide the pace at which the new technology would be implemented. Each and every time the marketplace has performed its function perfectly. HDTV should be no different. The natural forces of an orderly and well-informed market are far preferable to the artificial constraints the Commission seeks to impose.

For the forgoing reasons, Gillett Holdings, Inc., SCI Television, Inc. and Busse Broadcasting Corporation respectfully request that the Commission consider these Comments as it reconsiders its Second Report & Order as requested by NAB and MSTV and modify it as suggested herein.

Respectfully submitted,

GILLETT HOLDINGS, INC.  
SCI TELEVISION, INC.  
BUSSE BROADCASTING CORPORATION

By   
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July 16, 1992

**CERTIFICATE OF SERVICE**

I, Susan A. Burk, a secretary with the law firm of Pepper & Corazzini, hereby certify that a true and correct copy of the foregoing Comments on Petitions for Partial Reconsideration was served by U.S. mail, first-class, postage pre-paid on the 16th day of July, 1992, on the following individuals:

- \* The Honorable Alfred C. Sikes  
Chairman  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, DC 20554
  - \* The Honorable James H. Quello  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W., Room 802  
Washington, DC 20554
  - \* The Honorable Sherrie P. Marshall  
Commissioner  
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